

AMENDED IN ASSEMBLY JUNE 26, 2006

AMENDED IN ASSEMBLY JUNE 19, 2006

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN ASSEMBLY JUNE 15, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 550

Introduced by Senator Speier

February 18, 2005

An act to ~~add Section 1798.91.5 to the Civil~~ amend Section 22575 of the Business and Professions Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 550, as amended, Speier. ~~Data brokers.~~ Privacy.

Existing law requires an operator of a commercial Web site or online service that collects personally identifiable information, as defined, from California residents through an Internet Web site or online service for commercial purposes, to conspicuously post its privacy policy on its Web site or online service or make the policy available as specified. Existing law requires that the privacy policy identify certain information, including the categories of personally identifiable information that the operator collects about individual consumers who use or visit its Web site or online service and 3rd parties with whom the operator may share the information.

This bill would also require that the privacy policy describe the operator's policy with respect to disclosures of personally identifiable information to law enforcement agencies, and would require the operator to inform a consumer residing in California of any such disclosure within a reasonable period of time of that disclosure.

~~Existing law regulates businesses that disclose personal information about California residents to 3rd parties.~~

~~Existing law prohibits a telephone or telegraph corporation from making available to any other person or corporation, without prior written consent, specified information relating to a residential subscriber, including personal calling patterns, credit or other personal financial information, services purchased, and demographic information, as specified. Existing law authorizes a subscriber injured by a violation of these provisions to institute a civil action to recover damages.~~

~~This bill would prohibit an Internet service provider or electronic mail service provider from making available to any other person or provider, without prior written consent, specified information relating to a consumer, including the contents of any e-mail sent or received, personal e-mail patterns, credit or other personal financial information, services purchased, and demographic information, as specified. The bill would authorize a consumer injured by a violation of these provisions to institute a civil action to recover damages.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22575 of the Business and Professions
- 2 Code is amended to read:
- 3 22575. (a) An operator of a commercial Web site or online
- 4 service that collects personally identifiable information through
- 5 the Internet about individual consumers residing in California
- 6 who use or visit its commercial Web site or online service shall
- 7 conspicuously post its privacy policy on its Web site, or in the
- 8 case of an operator of an online service, make that policy
- 9 available in accordance with paragraph (5) of subdivision (b) of
- 10 Section 22577. An operator shall be in violation of this
- 11 subdivision only if the operator fails to post its policy within 30
- 12 days after being notified of noncompliance.

(b) The privacy policy required by subdivision (a) shall do all of the following:

(1) Identify the categories of personally identifiable information that the operator collects through the Web site or online service about individual consumers who use or visit its commercial Web site or online service and the categories of third-party persons or entities with whom the operator may share that personally identifiable information.

(2) If the operator maintains a process for an individual consumer who uses or visits its commercial Web site or online service to review and request changes to any of his or her personally identifiable information that is collected through the Web site or online service, provide a description of that process.

(3) Describe the process by which the operator notifies consumers who use or visit its commercial Web site or online service of material changes to the operator's privacy policy for that Web site or online service.

(4) Identify its effective date.

(5) *Describe the policy of the operator with respect to mandatory and voluntary disclosures of personally identifiable information to law enforcement agencies.*

(c) An operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service shall, within a reasonable period of time of disclosing the personally identifiable information of an individual consumer residing in California to a law enforcement agency, inform the consumer of the disclosure.

~~SECTION 1. Section 1798.91.5 is added to the Civil Code, to read:~~

~~1798.91.5. (a) No Internet service provider or electronic mail service provider shall make available to any other person or provider, without first obtaining the consumer's consent, in writing, any of the following information:~~

~~(1) The contents of any e-mail sent or received by the consumer.~~

~~(2) The consumer's personal e-mail patterns, including any listing of the e-mail addresses of the e-mail recipients contacted by the consumer, but excluding the identification to the e-mail~~

1 recipient of the person e-mailing and the e-mail address from
2 which the e-mail was placed.

3 (3) The consumer's credit or other personal financial
4 information.

5 (4) The services that the consumer purchases from the
6 provider or from independent suppliers of information services
7 who use the provider's Internet connection or equipment to
8 provide service to the consumer.

9 (5) Demographic information about individual consumers, or
10 aggregate information from which individual identities and
11 characteristics have not been removed.

12 (b) Any consumer who gives his or her prior written consent
13 for the release of one or more of the categories of personal
14 information specified in subdivision (a) shall be informed by the
15 Internet service provider or electronic mail service provider
16 regarding the identity of each person or corporation to whom the
17 information has been released, upon written request. The
18 provider shall notify the consumer of the provisions of this
19 subdivision whenever consent is requested pursuant to this
20 subdivision.

21 (c) Any consumer who has, pursuant to subdivision (b), given
22 prior written consent for the release of one or more of the
23 categories of personal information specified in subdivision (a)
24 may rescind this consent upon submission of a written notice to
25 the Internet service provider or electronic mail service provider.
26 The provider shall cease to make available any personal
27 information about the consumer, within 30 days following receipt
28 of notice given pursuant to this subdivision.

29 (d) This section does not apply to any of the following:

30 (1) Information provided by consumers for inclusion in the
31 provider's directory of consumers.

32 (2) Information provided to a collection agency by the
33 provider exclusively for the collection of unpaid debts.

34 (3) Information provided to an emergency service agency
35 responding to a 911 telephone call or any other call
36 communicating an imminent threat to life or property.

37 (4) Information provided to a law enforcement agency in
38 response to lawful process.

1 ~~(5) Information transmitted between Internet service providers~~
2 ~~or electronic mail service providers pursuant to the furnishing of~~
3 ~~electronic mail service.~~

4 ~~(6) Information required to be provided by the provider~~
5 ~~pursuant to state or federal law, rules, or orders regarding the~~
6 ~~provision through the Internet by parties other than the Internet~~
7 ~~service provider or electronic mail service provider of telephone,~~
8 ~~electronic mail, or other information services.~~

9 ~~(7) Information provided in response to a request pursuant to~~
10 ~~subdivision (a) of Section 530.8 of the Penal Code.~~

11 ~~(e) Every violation of this section is a ground for a civil suit by~~
12 ~~the aggrieved consumer against the Internet service provider or~~
13 ~~electronic mail service provider and its employees responsible~~
14 ~~for the violation.~~

15 ~~(f) For purposes of this section, the following definitions~~
16 ~~apply:~~

17 ~~(1) “Electronic mail” or “e-mail” means an electronic message~~
18 ~~that is sent to an e-mail address and transmitted between two or~~
19 ~~more telecommunications devices, computers, or electronic~~
20 ~~devices capable of receiving electronic messages, whether or not~~
21 ~~the message is converted to hard copy format after receipt,~~
22 ~~viewed upon transmission, or stored for later retrieval.~~
23 ~~“Electronic mail” or “e-mail” includes electronic messages that~~
24 ~~are transmitted through a local, regional, or global computer~~
25 ~~network.~~

26 ~~(2) “Electronic mail address” or “e-mail address” means a~~
27 ~~destination, commonly expressed as a string of characters, to~~
28 ~~which electronic mail can be sent or delivered. An “electronic~~
29 ~~mail address” or “e-mail address” consists of a user name or~~
30 ~~mailbox and a reference to an Internet domain.~~

31 ~~(3) “Electronic mail service provider” means any person,~~
32 ~~business, or organization, including an Internet service provider,~~
33 ~~that is an intermediary in sending or receiving electronic mail or~~
34 ~~that provides to end users of the electronic mail service the~~
35 ~~ability to send or receive electronic mail.~~

36 ~~(4) “Internet” means the global information system that is~~
37 ~~logically linked together by a globally unique address space~~
38 ~~based on the Internet Protocol (IP), or its subsequent extensions,~~
39 ~~and that is able to support communications using the~~
40 ~~Transmission Control Protocol/Internet Protocol (TCP/IP) suite,~~

1 ~~or its subsequent extensions, or other IP-compatible protocols,~~
2 ~~and that provides, uses, or makes accessible, either publicly or~~
3 ~~privately, high level services layered on the communications and~~
4 ~~related infrastructure described in this paragraph.~~

5 ~~(5) “Internet service provider” means an entity, to the extent~~
6 ~~that the entity is transmitting, routing, or providing connections~~
7 ~~for Internet communications initiated by or at the direction of~~
8 ~~another person, between or among points specified by a user, of~~
9 ~~material placed online by a user, storing or hosting that material~~
10 ~~at the direction of a user, or referring or linking users to that~~
11 ~~material.~~

12 ~~(6) “Recipient” means the addressee of an e-mail.~~